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IN THE

Supreme Court of the United States

SPRING TERM, 1971

No. 1431

ERNEST A. HINGLE,
Petitioner

versus

CHALIN O. PEREZ, ET AL,
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE FIFTH CIRCUIT

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OPINIONS BELOW

On March 31, 1970, petitioner's suit in the United States District Court, Eastern District of Louisiana, was dismissed for lack of Jurisdiction. The case is reported as 312 F. Supp. 127. (Appendix A) The Court of Appeals for the Fifth Circuit affirmed that decision without written reasons November 4, 1970. No petition for rehearing was filed. (Appendix B)

JURISDICTION

The judgment sought to be reviewed was rendered and entered on November 4, 1970 and is attached hereto as Appendix B. Application for an extension of time in which to petition for writ of certiorari was granted until March 4, 1971, by Mr. Chief Justice Berger and is attached hereto as Appendix C.

Jurisdiction of this Court is sought pursuant to 28 U.S.C. 1254.

QUESTIONS PRESENTED FOR REVIEW

1. Whether on the facts of this case, petitioner has met the jurisdictional requirements of 28 U.S.C. 1331 and 28 U.S.C. 1332.

2. Whether 28 U.S.C. 1343 properly confers jurisdiction upon a court of the United States where complainant's civil rights were violated through the destruction of complainant's property without due process of law.

CONSTITUTION AND STATUTES CONSTRUED

I. CONSTITUTION OF THE UNITED STATES

AMENDMENT FIVE provides in part:

"No person shall . . . be deprived of life, liberty, or property without due process of law; . . . ."

AMENDMENT FOURTEEN provides in part:

". . .Nor shall any State deprive any person of life, liberty or property, without due process of law; not deny to any person within its jurisdiction, the equal protection of the laws."

II. UNITED STATES CODE

28 U.S.C. 1331:

(a) The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff is finally adjudged to be entitled to recover less than the sum or value of $10,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interests and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

28 U.S.C. 1332:

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and is between–

(1) citizens of different States;

(2) citizens of a State, and foreign states or citizens or subjects thereof; and

(3) citizens of different States and in which foreign states or citizens or subjects thereof are additional parties.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff who files the case originally in the Federal courts is finally adjudged to be entitled to recover less than the sum or value of $10,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

(c) For the purposes of this section and section 1441 of this title, a corporation shall be deemed a citizen of any State by which it has been incorporated and of the State where it has its principal place of business: *Provided further,* That in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of the State of which the insured is a citizen, as well as of any State by which the insurer has been incorporated and of the State where it has its principal place of business.

(d) The word "States", as used in this section, includes the Territories, the District of Columbia, and the Commonwealth of Puerto Rico.

28 U.S.C. 1343:

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right of provilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in

section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;
(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;
(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

42 U.S.C. 1983:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. 1985:

(1) If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

Obstructing justice; intimidating party, witness, or juror

(2) If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any Party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

Depriving persons of rights or privileges

(3) If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or

advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

STATEMENT OF THE CASE

On August 17, 1968, respondants, acting in their official capacities as officials of the Parish of Plaquemines, State of Louisiana did cause to be destroyed one building in the process of being repaired and three stacks of valuable cypress lumber all owned by petitioner and situated on petitioner's land in Plaquemines Parish.

Respondants acted under color of state law, to wit: Ordinance Number 63, Parish of Plaquemines, State of Louisiana. (Appendix D). Ordinance Number 63 was passed by the Plaquemines Parish Commission Council in the wake of Hurricane Betsy in 1965. The Ordinance provides for demolition of private homes and other structures where the hurricane damage was so severe as to make the damaged structures threats to public health and safety, and where the value of the dwelling did not exceed the cost of demolition.

Previous to August of 1968, petitioner had dismantled one structure damaged by the hurricane and piled its cypress timber neatly on the back of his property. This tract of land was immediately across La. Highway 23 from petitioner's other tract on which the building destroyed by respondants had

stood. Petitioner had made some repairs to that building, also built of cypress, and was preparing to complete those repairs when respondants destroyed his building and the lumber stacked across the highway with a bulldozer and hauled the crushed and broken material away. This act occured three years after the hurricane.

Immediately after the leveling of petitioner's property, the respondants caused to be dug through petitioner's land a new addition to an existing water main. In the process of laying the pipe, the concrete slab upon which the building had rested was destroyed.

Since this application for certiorari challenges the denial of jurisdiction, the basis of federal jurisdiction is shown in the argument below.

ARGUMENT

I. THE COURTS OF THE UNITED STATES HAVE JURISDICTION TO DECIDE THIS CASE UNDER 28 U.S.C. 1331 and 28 U.S.C. 1332.

A. There is diversity of citizenship between petitioner Hingle, a resident of Mississippi and respondants, all residents of the State of Louisiana.

Respondants' citizenship has gone unquestioned in the courts below. Petitioner's citizenship is verified through longtime ownership of a personal residence and farmland in Mississippi and by his voting registration in Mississippi since the fall of 1968. It is contended by counsel for respondants that because Mr. Hingle owns property in Louisiana and has voted in Plaquemines Parish previous to his registration in Mississippi, that there exists no diversity between the parties. The trial Court did not reach this question since the Judge there thought

$10,000.00 was not in question, and hence saw no need to determine citizenship. It is submitted that the petitioner is properly domiciled in Mississippi. (See Appendix E pages 12-18a

B. The amount in controversy in this case is more than $10,000.00 and it was error for the Trial Court to find that there was less than the jurisdictional amount.

Expert testimony places the value of the piled cypress lumber at from $16,000.00 to $21,000.00 at $5.00 per foot, if such material were available today. (Appendix F, p21a-22a) It is submitted that on the basis of this testimony petitioner has met the jurisdictional amount.

The federal cause of action required for 1331 is discussed in II. infra.

II. JURISDICTION OF A COURT OF THE UNITED STATES IS VESTED IN THIS CASE IN 28 U.S.C. 1343 THROUGH 42 U.S.C. 1983 and 42 U.S.C. 1985.

A. Preliminary questions of abstention and exaustion.

Preliminary to the discussion of jurisdiction are two issues which the District Court considered in its decision to dismiss for lack of Jurisdiction. These issues are Abstention and Exaustion. Both are ably discussed by Chief Judge Brown in a 1970 Fifth Circuit opinion.

> "The district Court's articulated justification for its holding that it lacks jurisdiction was the failure of the tenants either to exhaust their state remedies, whatever they may be, or to show that these remedies were inadequate.
>
> ". . .During this one hundred years of [1983] experience the cry that it was necessary for state judicial remedies to be exhausted or shown to be inadequate before Federal court action to restrain state conduct could be taken has been heard repeatedly. It has, however, consistently fallen

on unresponsive ears and been muffled by the Supreme Court. See C. Wright, Federal Courts, Sec. 49 (2d ed. 1970).

"The cry was made by local government when local regulations of business were under constitutional attack. But the response to these cries was limited. In Bacon v. Rutland R. R. Co., 1914, 232 U.S. 134,34 S.Ct. 283, 58 L.Ed. 538, and equity bill to restrain the state public service commission from requiring the railroad to locate a passenger station in a particular place, Mr. Justice Holmes said that the state remedy available to the railroad to make its challenge was judicial and 'this being so * * * the railroad company was free to assert its rights in the district court of the United States.' 232 U.S. at 138, 34 S.Ct. at 284, 58 L.Ed. at 539. Mr. Chief Justice Taft took the same position in Pacific Telephone and Telegraph Co. v. Kuykendall, 1924, 265 U.S. 196, 44 S.Ct. 53, 68 L.Ed. 975. The only positive response came in the guise of the abstention doctrine where controlling questions of state law, which were unresolved by state courts, were presented. See e.g., Gilchrist v. Interborough Rapid Transit Co., 1924, 279 U.S. 159, 49 S.Ct. 282, 73 L.Ed. 652.

The same cry was also heard when the actions of local government were under attack because they allegedly deprived persons of personal civil rights. And it was again muffled. In Lane v. Wilson, 1939, 307 U.S. 268, 59 S.Ct. 872, 83 L.Ed. 1281, a suit challenging an Oklahoma restriction on voting, Mr. Justice Frankfurter said that to 'vindicate his present grievance the plaintiff did not have to pursue whatever remedy may have been open to him in the state courts. * * * Barring only exceptional circumstances * * * or explicit statutory, requirements * * * resort to a federal court may be had without first exhausting the judicial remedies of the state.' 307 U.S. at 274, 59 S.Ct. at 875, 83 L.Ed. at 1287 (Citations omitted).

The same cry was again heard after Mr. Justice Douglas set out the purposes of 42 U.S.C.A, Sec. 1983 in Monroe v. Pape. 1961, 365 U.S. 167, 81 S.Ct. 473, 5 L.Ed.2d 492. It was argued that *Monroe* held that the only purpose of Sec. 1983 was to provide relief where state remedies were inadequate or only available in theory, not in practice. But the Supreme Court soon quieted this argument.

In McNeese v. Board of Ed., 1963, 373 U.S. 668, 671, 83 S.Ct. 1433, 1435, 10 L.Ed.2d 622, 624-625 the court pointed out that in Monroe, *supra,* 365 U.S. at 183, 81 S.Ct. at 482, 5 L.Ed.2d at 503 it had said that the 'federal remedy is supplementary to the state remedy, and the latter need not be sought and refused before the federal one is invoked.' This has routinely been repeated by that Court, Camico v. California, 1967, 389 U.S. 416, 88 S.Ct. 526, 19 L.Ed.2d 647; Houghton v. Shafer, 1968, 392 U.S. 639, 88 S.Ct. 2119, 20 L.Ed.2d 1319; and we do not believe that the pronouncements made by the Court in those cases were meant to be limited to any particular type of Sec. 1983 case. See Note, Exhaustion of State Remedies under the Civil Rights Act, 68 Colum. L.Rev. 1201 (1968). We believe they were to have general application.[11] In a like manner, this Court routinely rejects the cry that it is necessary to exhaust state remedies. See Orr v. Thorpe, 5 Cir., 1970, 427 F.2d 1129. And we here again reject it."

(Hall v. Garson, 430 F.2d. 430, (5th Cir. 1970) at 436-437)

On the question of Abstention, the *Hall* court said:

"In its order dismissing this case the District Court's citation of *Schwartz* could also be construed as invoking the mutation of the abstention doctrine that was there given birth. The *Schwartz* version of the abstention doctrine is that since the state has a vital interest in

education and has a procedure through which a federal claim may be presented any federal interests are 'amply protected by the opportunity for direct review in the United States Supreme Court of all State judicial decisions.' Schwartz, *supra,* 309 F.Supp. at 1049.

But this mutation is inconsistent with the prior evolution of the law. It, like the exhaustion requirement, cannot survive. First, the abstention doctrine in federal constitutional claims is generally grounded on uncertainty[12] created by the 'strands of local law woven into the case' McNeese, *supra,* 373 U.S. at 673, 83 S.Ct. at 1436, 10 L.Ed.2d at 626. See Reetz v. Bozanich, 1970, 397 U.S. 82, 90 S.Ct. 788, 25 L.Ed.2d 68. When, however, the cloth of state law is, as here, off the loom and there can be no doubt as to what the state law provides, there is no place for abstention.[14]"

(*Hall* supra at 437)

12. It has been that there are four abstention doctrines. In addition to the (i) traditional doctrine classically articulated in Railroad Commission v. Pullman Co., 1941, 312 U.S. 496, 61 S.Ct. 643, 85 L.Ed. 971, (ii) it had been argued that federal Courts may avoid decision in order to prevent needless conflicts with state activity, (iii) to leave to the states the resolution of unsettled questions of state law, and (iv) to ease the congestion of federal court dockets. C. Wright, Federal Courts Sec. 52 (2d ed. 1970). But the scope of these different doctrines, if indeed they are different, is illusive. See Zwickler v. Koota, 1967, 389 U.S. 241, 88 S.Ct. 391, 19 L.Ed.2d 444. It is certain, however, that none authorizes abstention when state law is clear simply because the state has a general interest in the subject matter of the controversy, whether it is schools or debt collection. See McNeese, *supra.*

14. The rule has recently been well articulated by Judge Dyer for a 28 U.S.C.A. Sec. 2281 three-Judge Court:

> "The fact that a state remedy is available is not a valid basis for federal court abstention. Monroe v. Pape, 1961, 365 U.S. 167, 183, 81 S.Ct. 473, 5 L.Ed.2d 492; McNeese v. Board of Education, 1963, 373 U.S. 668, 671, 83 S.Ct. 1433, 10 L.Ed.2d 622; Zwickler v. Koota, 1967, 389 U.S. 241, 251, 88 S.Ct. 391, 19 L.Ed.2d 444. There can be no doubt in this case about what the statute means. It defies any interpretation that would or could avoid or modify the constitutional question. In such a case it is the duty of a federal court to exercise its jurisdiction. Zwickler v. Koota, *supra*; Harman v. Forssenius, 1965, 380 U.S. 528, 534-535, 85 S.Ct. 1177, 14 L.Ed.2d 50; *cf.* Reetz v. Bozanich, 1970, 397 U.S. 88, 91, 90 S.Ct. 788, 25 L.Ed.2d 73, 76; Wright v. City of Montgomery, Alabama, 5 Cir., 1969, 406 F.2d 867, 871."

Hargrave v. Kirk, M.D.Fla., 1970, 313 F.Supp. 944.

The state law is clear in the case at bar as well as in *Hall.* Ordinance Number 63 provides for no administrative hearing and allows total destruction of a person's property after three days notice posted upon the structure. (For further analysis of the statute see part B. of this section)

On the basis of the foregoing analysis of the two doctrines by Judge Brown it is submitted that the case at bar should pass those doctrines and be examined on the basis of whether there exists a cause of action and whether that cause of action properly fits under 28 U.S.C. 1343.

B. Cause of Action.

The cause of action alleged by petitioner is the destruction of his property without due process of law and without the

equal protection of the laws in contravention of 42 U.S.C. 1983 by conspiracy of respondents under 42 U.S.C. 1985.

The decision to destroy petitioner's property was made by respondents A. La France and James C. Hoffman with the approval of the Plaquemines Parish Commission Council, Chalin O. Perez, president. Mr. Hoffman, the parish safety engineer, fire marshall and civil defense director, is the person to whom Ordinance No. 63 delegates its broad powers. In his deposition (Appendix H p26-32a) Mr. Hoffman states that whenever the building can in his estimation be repaired, he contacts the landowner. In a letter to the Parish Council dated over two weeks before the demolition of the property, Mr. Hoffman states that Mr. Hingle was the owner of the property. (Appendix G) The parish engineer, then, knew of Mr. Hingle's ownership and yet failed to notify him of the pending destruction as he states that he normally does. Mr. Hoffman stated that the reason Mr. Hingle was not notified was that in his opinion the building could not be repaired. (Appendix H p30-31a Directly contrary to that opinion, and aside from the fact that the building had stood for three years after the hurricane, is the fact that Petitioner Hingle had made repairs, installed plywood, protected the plate glass windows, and intended upon completion of renovation to use the building. (Appendix E) The question of why the stacked cypress lumber across the road from the building was destroyed could not be answered except to say that the bulldozer which had destroyed the building pushed the remains across the road and railroad track onto Hingle's other property (Appendix L41-42a) and when the parish cleanup crew under the supervision of Mr. B. J. Perez, the "Superintendent of Beautification" (Appendix H 32-33a) hauled the remains of Hingle's bulldozed building away they picked up the cypress lumber for good measure. (Appendix H page 33a and Appendix K 38-39a) All the building needed in the way of repair in the words of one witness was a paint job and patch work. (Appendix I page 35a)

On the basis of the above information, it is submitted that respondants acted to deprive petitioner of due process of law and the equal protection of the law.

In connection with the charge of conspiracy in contravention of 42 U.S.C. 1985 there are two sets of circumstances which when added to the above remarks comprise petitioner's cause of action against respondents.

1. Until the fall of 1968 when he moved his domicile to Mississippi, petitioner had been one of the few persons politically active against the politically and economically powerful regime of Leander H. Perez, Sr. Mr. Hingle had run unsuccessfully for parish political office four times from 1930 to 1967, the last time he was opposed by respondant Chalin O. Perez for president of the parish council. (Appendix E page 14a

2. Immediately after the destruction of the building and the removal of the lumber, a construction company under parish contract connected a water main to an existing line running along Hingle's property. The existing water main was, according to respondents, within the highway right of way. However, the sub-surface road crossing necessary to make the tie in necessitated digging a trench eighteen feet onto Hingle's property. In order to dig the trench, the contractor had to break up and move the concrete slab on which the building had rested. (Appendix J p36-37a.

Under these cirsumstances one could fairly conclude that respondents conspired to deprive petitioner of his property without due process, just compensation, or equal protection, (Morgan v. Sylvester, 125 F. Supp. 380, 389 (1954) in order to intimidate a political enemy and connect a parish water main without compensating the property owner.

Before resting on that conclusion, however, it is necessary to further examine that particular color of state law under which

respondents proceeded. Ordinance Number 63 (Appendix D) allows the parish safety engineer and building inspector to determine what is a "menace to public safety" without a hearing or method of appear and "without previous notice except by posting on said dangerous and unsafe structure a notice. . .and unless action is taken within three days after said posting the Parish Building Inspector or Parish Safety Engineer may order its demolition." The determination of what is a menace to public safety by two parish officials would seem to be both unconstitutionally broad in delegation and unconstitutionally vague in wording. When action taken under a statute such as this is improvident as well, then an aggrieved party must have some form of appeal or such an ordinance is in direct violation of the Fifth and Fourteenth Amendments (American Home Fire Assur. Co. v. Mid-West Enter. Co. 189 F.2d 528, 531 (1951)) Plaintiff not only has no forum for appeal, but little or no notice that his property is posted for destruction by the state. To delegate such power to a safety engineer violates substantive due process and vests arbitrary, capricious and unreasonable discretionary powers in an administrative officer.

With the use of an unconstitutional statute unconstitutionally applied now set forth, the only conclusions that can be drawn in light of the above evidence are those of *conspiracy* to deny petitioner his civil rights and the *actual denial* of those rights under color of law.

C. The "property rights-personal rights" distinction cannot be maintained as an aid to construction of 28 U.S.C. 1343 in this case.

The problem of jurisdiction once a federal question cause of action has been asserted under 42 U.S.C; 1983 and 42 U.S.C. 1985 is now narrowed to which kinds of rights the courts of the United States will enforce through 28 U.S.C. 1343. The property rights-personal rights controversy must now be discussed in order to determine whether the distinction should be

thrown out or whether petitioner's cause of action brings this case under the personal rights category.

As a result of an opinion by Mr. Justice Stone, the jurisdictional waters around 28 U.S.C. 1343 have been clouded by an unworkable distinction between personal rights which do get jurisdiction and property rights which don't. (Hague v. C.I.O., 307 U.S. 496).

Mr. Justice Stone's opinion, however, is not the majority opinion in Hague, but it is only one of three concurring opinions written to hold that Judicial Code Sec. 24 (14), the predecessor to Sec. 1343, gave the Court jurisdiction over claims of denial of the right to freely disseminate literature and the right to peaceably assemble. The other two concurring opinions written by Chief Justice Hughes and Justice Roberts make no mention of a property-personal right distinction. Justice Stone was concerned only with the question of whether Judicial Code Sec. 24 would give the Court jurisdiction of a claim not subject to any pecuniary valuation. He held that personal rights not subject to any pecuniary valuation could not be brought under Sec. 24. Justice Roberts' opinion states that the Civil Rights act of 1871, 42 U.S.C. 1983, was meant to give a cause of action for violations of the Fourteenth Amendment. (307 U.S. at 510). Justice Stone seems to agree when he says:

> " Since freedom of speech and assembly are rights secured to persons by the due process clause, all of the individual respondents are plainly authorized by Sec. 1 of the Civil Rights Act of 1871 to maintain the present suit in equity to restrain infringement of their rights."(307 U.S. at 527)

It surely could not have been the intent of Congress to give a cause of action under Sec. 1983 and at the same time deny jurisdiction under Sec. 1343 (3), whose language is identical with Sec. 1983.

Judge Bell in Bussie v. Long (383 F.2d. 766, 769) on Justice Stone's opinion, erroneously breathed life into the property-personal right distinction. Judge Bell attempted to distinguish

three Fifth Circuit cases in which a property right and Sec. 1343 (3) jurisdiction was claimed; the three cases are: Hornsby v. Allen, 326 F.2d 605 (5th Cir., 1964) (Arbitrary refusal of the city to issue a liquor license), Mansell v. Saunders, 372 F.2d 573 (5th Cir., 1967) (unconstitutional denial of a garbage district franchise), and McGuire v. Sadler, 337 F. 2d 902 (5th Cir., 1964) (unconstitutional taking of certain land without due process).

Judge Bell concedes that there may have been a Sec. 1983 cause of action in McGuire, but in Hornsby and Mansell he asserts that there was a federal question and probably the jurisdictional amount was present. As Judge Johnson correctly analyzed the three cases in Hornbeak v. Hamm, 283 F. Supp. 549, 55 (M.D. Ala., 1968), (dissenting opinion), all the cases sustained Sec. 1343 (3) jurisdiction when a property right was being asserted.

> "The majority, in order to attempt to sustain its action of dismissal, after citing the cases from the Seventh, Tenth and Third Circuits that support the dismissal and recognizing the contrary authority of the Sixth, Second and First Circuits, and after refusing to follow McGuire, Hornsby and Mansell and ignoring the February 13, 1968, case of Atlanta Bowling Center, Inc. v. Ivan Allen, Jr., supra–all of the Fifth Circuit–elects to follow the lone Fifth Circuit case of Bussie. The attempt to distinguish Bussie from these cases with the statement that the "choice has been made" for this Court by Bussie is completely specious. Even the Fifth Circuit in Bussie recognized 'there is admittedly a fine line between these cases'– Hornsby, Mansell, McGuire, Atlanta Bowling Center and Bussie–involve nothing more or less than property rights, there simply is no valid distinction which will justify the majority of this Court concluding, solely upon the basis of Bussie, the jurisdiction does not now exist in the case before us."

In Mansell the only question to be decided was whether the District Court properly dismissed the case because of lack of Sec. 1343 (3) jurisdiction. Citing Hornsby and McGuire with approval, the Fifth Circuit held there was Sec. 1343 (3) jurisdiction. 372 F. 2d at 575. In McGuire, Judge Wisdom citing Hornsby said that the court had Sec. 1343 (3) jurisdiction. 337 F. 2d at 904.

Judge Bell in his Bussie opinion did not even mention Barnes v. Merritt, 376 F. 2d 8 (5th Cir., 1967) which was decided shortly before Bussie. Barnes, dealing with the arbitrary denial of a liquor license, held that there was a Sec. 1983 cause of action and cited Hornsby as authority. 376 F. 2d at 18. Atlanta Bowling Center v. Allen, 389 F. 2d 713 (5th Cir., 1968) is the most recent decision of this Circuit dealing with the arbitrary refusal to issue a liquor license. Although tne District Court had dismissed Atlanta Bowling Center for lack of Sec. 1343 (3) jurisdiction, this Court decided the case on the merits. Obviously the Court entertained jurisdiction since a court will not reach the merits unless it has jurisdiction.

In the Case at bar the District Court summarized these license cases in terms of the magnitude of personal harm and as denial of equal protection.

> "The Fifth Circuit, for example, has upheld Sec. 1343 jurisdiction in a number of licensing cases, both because arbitrary denial of equal protection and because licenses involve the personal right to pursue a particular calling although the direct injury is monetary." (Appendix A page 5a

Here, petitioner has had the right to do business in his own building taken away by the state under an unequally applied use of an unconstitutional statute.

As Judge Brown noted in one of the most recent Fifth Circuit decisions, discussing Sec. 1983, it makes no sense to distinguish between property rights and personal rights when property rights are inseparable from rights of an essentially personal nature. Gomez v. Florida State Employment Service,

417 F. 2d 569, 579 (5th Circuit, 1969) (wages and living conditions for migrant workers.)

> We need not determine the extent to which "Property" rights are outside of Section 1983 recourse. Since the essence of the claim here is the denial of rights of an essentially personal matter touching such intimate things as living and eating together, freedom from the marks of modern peonage, working at starvation wage levels, and degrading poverty. 417 F. 2d at 579.

Recently the Second Circuit in Holmes v. New York City Housing Authority, 398 F. 2d 262 (2nd Cir., 1968) (standards for admission to public housing projects) and two Supreme Court cases, Damico v. California, 389 U.S. 416 (1967) and King v. Smith, 392 U.S. 309 (1968) (both Supreme Court cases dealing with the right to Aid to Families with Dependent Children benefits) have held that the rights asserted involved the fundamental necessities of life, not to be excluded from the prophylactic effect of Sec. 1983 on the premise that "property" rights are not "civil" rights.

In the latest case to declare a proper relationship between the rights of a Citizen of the United States–whether they be "property" or "personal"–Chief Judge Brown states:

> Closely akin to the defendants' assertion that the District Court lacks jurisdiction because a jurisdictional amount has not been stated is their claim that there is no jurisdiction under 28 U.S.C.A. Sec. 1343 because only "property rights" are involved. The argument is based on statements in several cases that Sec. 1343 does not protect property rights. See e. g. Hague v. C.I.O., 1939, 307 U.S. 496, 59 S.Ct. 954, 83 L.Ed. 1423; Holt v. Indiana Mfg. Co., 1899, 176 U.S. 68, 20 S.Ct. 272, 44 L.Ed. 374. We have expressed doubts, see e. g. Bussie v. Long, 5 Cir., 1967, 383 F. 2d 766; Atlanta Bowling Center, Inc. v. Allen, 5 Cir., 1968, 389 F.2d 713.

These cases are not, however, applicable here. The act that gave rise to this controversy was theneed not be sought and refused before the federal one is invoked.' seizure by Sylvia Garson of Claudine Hall's General Electric television. But the rights that the petition seeks to protect are not the rights to the televeision. They are, instead, the right of the individual to be secure in his home and free from the invasion of that home without any prior procedure to protect his interest. They are then the most personal constitutional liberties of privacy and the right to be free from unreasonable searches and seizures by private persons with the blessings of this state. Plaintiffs seek the opportunity to protect those rights through the due prodedures of the law. See Gomez, supra, 417 F. 2d at 579 n. 37. These rights that this petition seeks to protect are truly the fundamentals of liberty, the essence of human dignity. Such fundamental, human, highly personalized rights are "just the stuff from which Sec. 1983 claims are to be made." Gomez, supra, 417 F. 2d at 579; See Monroe v. Pape, supra.
(Hall v. Garson, supra at 438)

The question that must be asked is whether Mrs. Hall would have her claim ajudicated under 1343 if she were prevented from enjoying her personal rights to peaceful possession of her TV set if the Texas Statute authorized the bulldozing of her apartment building thereby preventing her personal rights to privacy from ever existing. If invasion of privacy is a "private right" to be protected by the Courts of the United States, should we not also protect the right of a person to maintain a dwelling which could furnish that privacy? Judge Bell in a tax equalization case may have been right when he said "there is admittedly a fine line between he cases" (Bussie supra at 769), but here there seems to be no line at all.

McGuire v. Sadler, supra deals most directly with the factual situation in this case. There a 1983 question was properly

asserted through 1343 when a new State survey purported to strip McGuire of much of his land. Judge Wisdom relied on the state contract of sale with petitioner's original predecessor in title to say that McGuire was asserting a personal right of contract. Here, petitioner's heirs in title originally purchased the land from the state, and under the same reasoning there is a taking where state renders the present property valueless when it abuses its police and eminent domain powers. Certainly, McGuire v. Sadler cannot stand as law without petitioner Hingle having "his day in court" along with McGuire. (McGuire supra at 906.)

In summary, it is urged that petitioner has established a valid cause of action under 42 U.S.C. 1983 and 42 U.S.C. 1985, and is entitled to his day in federal court under 28 U.S.C. 1343. The time is ripe for this Court to decide once and for all the property right-personal right controversy. It is submitted that this case is the one on which to decide that question.

CONCLUSION

In conclusion, petitioner prays that this Court grant jurisdiction for petitioner's cause of action either under 28 U.S.C. 1331, 28 U.S.C. 1332, or 28 U.S.C. 1343.

Respectfully submitted,

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1006 Baronne Building
305 Baronne Street
New Orleans, Louisiana 70112
(504) 525-4361

By _____
BENJAMIN E. SMITH

APPENDIX A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

ERNEST A. HINGLE,
Plaintiff,
versus

CHALIN O. PEREZ, individually and as President of the Parish Council of Plaquemines Parish Louisiana, LUKE A. PETROVICH, individually and as Commissioner of Public Safety of Plaquemines Parish Louisiana, A. L. LaFRANCE and JIM HOFFMAN, individually and as Safety Enigneers of Plaquemines Parish Louisiana, CLEMENT BETPOVEY' JR. & CO., and PLAQUEMINES PARISH LOUISIANA through its Parish Council President CHALIN O. PEREZ

Defendants

CIVIL ACTION
No. 68-2057
SECTION "C"

Benjamin E. Smith, Esq.
Attorney for Plaintiff

Sidney W. Provensal, Jr., Esq.
Attorney for Defendants

'UBIN, District Judge:

Ernest A. Hingle, a Plaquemines Parish landowner, here seeks recompense from that Parish and several of its officials for the allegedly illegal destruction of certain property belonging to him. Plaintiff and defendant have filed cross motions for summary judgment, and defendant has moved to dismiss for lack of jurisdiction.

Plaquemines Parish Ordinance No. 63, adopted October 7, 1965, authorizes the demolition of buildings and parts of buildings upon the determination . the Parish Building Inspector that they constitute a menace to public safety. The public wreckers may proceed after posting notice on the building; they are not required to give personal notice to the property owners. The ordinance was passed as part of the Parish's effort to restore the damage wrought by Hurricane Betsy.

Around August 16, 1968, Parish employees razed a shed on Hingle's property in Port Sulphur, and removed some lumber that was piled on his ıd. Shortly thereafter, a private contractor engaged by the Parish dug a ditch along the edge of Hingle's property, but not in it, in order to lay a water main; the ditch was filled when the job was finished, however, and plaintiff's land was cleared of all spoil.[1]

Plaintiff contends jurisdiction of this case in federal court can be based on 28 U.S.C.A. Sec. 1331 (diversity of citizenship) or 28 U.S.C.A. Sec. 1332 (federal question). We need not deal with the controversy over Hingle's citizenship for purposes of diversity, because it is apparent from the evidence submitted that the cause does not involve damages amounting to more than $10,000, as required for a diversity suit. The same objection forecloses resort to Sec. 1332, as a claim in excess of $10,000 is needed for jurisdiction under that statute, as well.

Plaintiff also asserts federal jurisdiction exists in this case under 28 U.S.C.A. Sec. 1343 (3):

> The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:
> (3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

Hingle contends that the destruction of his property without notice,[2] hearing or compensation violated the due process clause of the Fourteenth Amendment–a "right. . .secured by the Constitution of the United States"–and that he may therefore proceed under this statute without regard to jurisdictional amount.

This case is a classic invocation of the due process clause to afford substantive protection against the taking of property by the state, using summary procedure, without compensation to the owner. Plaintiff has had full opportunity to present any evidence that he, as an indiviual or as a member of a class, was discriminated against in the enactment or in the enforcement of Ordinance No. 63. He has offered none, and no serious claim based on a denial of equal protection of the law is asserted.

The primary difficulty in reading Sec. 1343 (3) as a grant of jurisdiction for this case is that such an interpretation would turn the section designed to protect civil rights into one providing an automatic federal forum for all lawsuits involving federal rights, regardless of jurisdictional amount. If that

interpretation were to prevail, the principal statute creating "federal question" jurisdiction, Sec. 1332, would be completely eclipsed.

Courts have been struggling with the overlap between the two jurisdictional enactments since Hague v. CIO, 1939, 307 U.S. 496. In that case, while the Court found the district court had jurisdiction under the civil rights laws to enjoin interference with First Amendment rights, the Supreme Court itself was unable to offer a majority opinion explaining its result. Most often lower courts have followed the opinion of Mr. Justice Stone, 307 U.S. at 518-32, in which he reconciles the two statutes by limiting the civil rights jurisdiction to situations where "the right or immunity is one of personal liberty, not dependent for its existence upon the infringement of property rights," id. at 531.

Justice Stone's formulation has been criticized in the legal literature[3] and its usefulness as a rule of thumb has been diminished as the accepted conceptions of due process and constitutionally protected personal freedom have expanded. Like the Supreme Court in *Hague*, the Fifth Circuit has presented no clear guiding principle to distinguish between the cases where one or the other jurisdictional statute applies. It has accepted Sec. 1343 (3) jurisdiction over a group of cases involving monetary damage, but it has not discarded Sec. 1332 as a limitation on the controversies involving federal questions that can be sued on in federal court.[4]

The various authorities do demonstrate that the problem can be resolved in a particular case only by examining the facts of that case; appeals to nineteenth-century legislative history and the personal motivations of the Reconstruction Congressmen who supported the civil rights statutes are of little assistance. Interpretation of still mooted questions of federal jurisdiction

today can more sensibly be focussed on the problem of the proper allocation of litigation to a suitable forum. Section 1332 remains as a Congressional direction that, in the main, federal courts should not spend their time on cases involving less than $10,000 even though federal rights are at issue. Section 1343 (3) provides one of several special exceptions to that rule, where special federal jurisdiction is needed either because state courts cannot be relied on to protect certain rights with sufficient diligence or because uniformity in decision is particularly desirable.

The personal right-property right distinction, if not followed mechanically, is a fairly accurate reflection of these considerations. State courts have traditionally maintained their expertise in matters concerning property, and national uniformity in that area is neither needed nor desired. Much of the confusion surrounding Sec. 1343 (3) has developed out of the attempt to define what is a *personal* right. The Fifth Circuit, for example, has upheld Sec. 1343 jurisdiction in a number of licensing cases, both because arbitrary denial of a license may carry overtones of denial of equal protection and because licenses involve the personal right to pursue a particular calling although the direct injury is monetary; on the other hand, the right to be taxed by the state on the basis of equal property assessments has been held to be a property right inappropriate for Sec. 1343 (3) jurisdiction. As Judge Bell said in Bussie v. Long, 5 Cir. 1967, 383 F. 2d 766, 769 (a tax equalization case), "[T]here is admittedly a fine line between" the cases.

The instant case is the paradigm of a property rights controversy. Louisiana state courts have provided an effective forum for the redress of the rights of owners of private property against state taking. The Louisiana Constitution, Art. I Section 2, and the Louisiana Statutes, LSA-R.S. 19:1, et. seq., provide constitutional and legislative protection for those aggrieved by state action that constitutes a taking of property. There is no

allegation or evidence in this record that the Louisiana courts would not provide plaintiff with a fair hearing.[5] Dividing litigation between federal and state courts on the basis of how much money is involved may strike some critics as an unsatisfactory means of defining jurisdiction, but Congress has both the power and the duty to fix the criteria, and it has considered the amount in dispute as a desirable standard. While the jurisdictional amount remains a requirement of Sec. 1332, the personal right-property right test proposed by Justice Stone is the most convenient yardstick for determining which federal question cases should be held to that requirement. See Eisen v. Eastmen, 2 Cir. 1969, Docket No. 32909, 38 Law Week 2331.

For these reasons, defendants' motion to dismiss for lack of jurisdiction will be GRANTED.

/s/ Alvin B. Rubin
UNITED STATES DISTRICT JUDGE

New Orleans, Louisiana
March 31, 1970

1) The private contracting firm was originally joined as a defendant, but summary judgment has already been entered in its favor.

2) In their Statements of Material Facts, plaintiff and defendants differ over whether Hingle's property was actually posted as the ordinance required. The evidence shows that Hingle was out of the state during the period the Parish claims to have posted the notices, but that he received actual notice

that demolition of his building was contemplated. At any rate, the matter is not relevant to disposition of the jurisdictional question.

3) *See, e.g.*, Limiting the Section 1983 Action in the Wake of Monroe v. Pape, 1969, 82 Harv. L. Rev. 1486.

4) Compare Mansell v. Saunders, 5 Cir. 1967, 372 F.2d 573, McGuire v. Sadler, 5 Cir. 1964, 337 F.2d902, and Hornsby v. Allen, 5 Cir. 1964, 327 F.2d 605 with Bussie v. Long, 5 Cir. 1967, 383 F.2d 766 and Hornbeak v. Hamm, M.D. Ala. 1968, 283 F.Supp. 549 (three-judge court). The differneces over interpretation of Sec. 1343 (3) are ably and fully explored in the majority opinion of Judge Godbold and the dissent by Judge Johnson in *Hornbeak, supra.*

5) If for some reason plaintiff felt he should not receive a fair hearing in the Parish whose actions he was challenging, he should move for a change of venue as provided by the Louisiana Code of Civil Procedure, LSA-C.C.P. Art. 122.

APPENDIX B

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 29932
Summary Calendar*

ERNEST A. HINGLE,
Plaintiff-Appellant,

versus

CHALIN O. PEREZ, ET AL,
Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana

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(November 4, 1970)

Before BELL, AINSWORTH and GODBOLD, Circuit Judges.

PER CURIAM: We affirm on the opinion of the District Court. *Hingle v. Perez*, 312 F. Supp. 127 (E.D. La. 1970).

AFFIRMED.

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*Rule 18, 5th Cir.; See Isbell Enterprises, Inc. v. Citizens Casualty Co. of New York, et al., 5th Cir., 1970, ——— F.2d ———, Part I [No. 29278, August 14, 1970].

Adm. Office, U.S. Courts—Scofields' Quality Printers, Inc., N. O., La.

APPENDIX C

Supreme Court of the United States

No. ---------- , *October Term, 1970*

ERNEST A. HINGLE,
Petitioner,

vs.

CHALIN O. PEREZ, ET AL.

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for petitioner, IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including March 4 ,19 71

/s/ WEB
Chief Justice of the United States.

Dated this 5
day of February , 19 71

APPENDIX D

ORDINANCE NO. 63

Whereas, State Law, Revised Statue 40, Section 1575, provides for the removal of dangerous structures which are liable to fire, or are dangerous to life and so situated as to endanger property or ththe occupants thereof, be removed or the premises razed and the National Building Code adopted by the Parish of Plaquemines, Building Code Ordinance No. 15, contains a similar provision which needs amendment,

THEREFORE:

BE IT ORDAINED by the Plaquemines Parish Commission Council, that SECTION 6- of the National Building Code made part of ORDINANCE No. 15, be amended by adding thereto subparagraph numbered 6.8 as follows:

SECTION 6 UNSAFE BUILDING AND STRUCTURES:

6.8 Demolition and Removal.

The Building Inspector, with approval of the Parish Safety Engineer, shall determine as a matter of fact whether or not said premises, building, or part or parts of building, etc., are in imminent danger of collapse or constitute a menace to public safety, whereupon they shall have authority to cause the demolition and removal of said premisis, building, part or parts of buildings, ets., by a department or a private corporartion or persons without previous notice to the owner, executor, administrator, agent or leasee, or any person or persons who may have

vested or contingent interest in said premises, building, part or parts, of building, except by posting on said dangerous and unsafe structure a notice printed in black that the same has been declared dangerous and unsafe and must be demolished an removed in the public interest, which posting shall constitute public notice to all persons to whom it may concern, and unless action is taken within three days afrer said posting the Parish Building Inspector or Parish Safety Engineer may order its demolition.

And the Ordinance was declared adopted on this 7th day of October, 1965.

I hereby certify the above and foregoing to be a true and correct copy of an ordinance adopted by the Plaquemines Parish Commission Council at a meeting held at its office in the Courthouse, Pointe a la Hache, Louisiana, on October 7, 1965.

/s/ E. LaFrance
Secretary

APPENDIX E

EXCERPT FROM DEPOSITION OF ERNEST A. HINGLE PAGES 4-9, 33-34.

Q Mr. Hingle, you are the plaintiff in this suit we are here taking this testimony on?

A That's right.

Q You have run for public office many times in Plaquemines Parish?

A A few times, yes.

Q When was the first time you ran for public office?

A In 1932.

Q And you also ran in 1940?

A That's right.

Q And you ran for sheriff, what was it, 1955, '56?

A '56, I believe.

Q 1956. Subsequent to your registering in 1955, registering to vote in 1955, do you recall a lawsuit that was brought against the then Registrar of Voters in Plaquemines Parish, Frank Giordano?

A I do.

Q By Mr. Tullier?

A Yes.

Q That suit was instituted in Federal Court in New Orleans?

A Yes, sir.

Q And Mr. Tullier lost that lawsuit, didn't he?

A I believe he did.

Q And subsequent therto there was a suit by Mr. Giordano in Plaquemines Parish for damages against Mr. Tullier, isn't that correct?

A Well, that I wouldn't know.

Q You didn't testify in that lawsuit in Point-a-La-Hache?

A No, I don't believe I did.

Q Did you ever partially reimburse Mr. Tullier for what he paid in damages as a result of that lawsuit?

A No.

Q Did Mr. Tullier ask you to?

A No.

Q Then in March of 1965 you registered to vote in Plaquemines Parish?

A That's right, yes, somewhere around that time, yes.

Q Then in March of 1967 you wanted to re-register to vote before the then and the current Registrar of Voters, Mr. Roy Lyons, isn't that right?

A If I wanted to re-register?

Q Yes, you went in and asked him to re-register.

A But I did register.

Q And at that time he told you that you were already registered, you didn't have to re-register.

A That's right.

Q But you insisted that you wanted to re-register anyway, didn't you?

A Yes, that's correct.

Q And he permitted you to re-register?

A Yes, sir.

Q And you ran for the office of member of the Commission Council?

A Yes, sir.

Q And your opponent was the current President of the Commission Council, Mr. Chalin O. Perez, the defendant in this lawsuit?

A That's right.

Q And do you know that in that election that the Charter of the Plaquemines Parish Constitutional Amendment authorizing that Charter provided that that particular vacancy to be filled by election has to be filled by someone on the East Bank —a resident of the East Bank of the Mississippi River. Did you know that?

A No, sir, I didn't know that.

Q You were, at that time, living in Port Sulphur?

A Port Sulphur.

Q Where in Port Sulphur?

A On Belview Drive.

Q Do you still own that property on Belview Drive?

A Yes, sir.

Q What is it, a home?

A Now I have apartments there.

Q Apartments?

A Yes, sir.

Q You have one apartment for yourself?

A Yes, sir. I keep one for myself.

Q That election for Commission Council, the last one, last election you ran for office was on September 2, 1967, was it not?

A I believe so.

Q And you voted in that election in which you were a candidate for office?

A That's right.

Q Do you recall how many votes you got in that election approximately?

A In the neighborhood of 1,200.

Q In the November 5th, 1968 election for President of the United States, you voted in Ward 4, Precinct 2 of Plaquemines Parish, didn't you?

A Well, formerly Ward 9 and they changed it to Ward 4.

Q And you voted that election on November 5, 1968 in Plaquemines Parish?

A That's right, yes.

Q Between the period March 29, 1965 and March 31, 1967, where did you live?

A 1965 and 1967?

Q Yes.

A Well, I lived in both places. I lived in Picayune, Mississippi and also at Port Sulphur. Most of my property and I have a number of apartments in Port Sulphur.

Q In other words, you still have a substantial financial investment in Plaquemines Parish?

A That's right.

Q And you maintain an apartment where you can come and go as you see fit?

A Come and go as I please, yes.

Q When was the last time you were in that apartment?

A Yesterday.

Q You spent last night there?

A No, night before last.

Q And you are now also registered to vote in Mississippi?

A Yes, sir.

Q And you own some property in Mississippi, don't you?

A That's right, yes.

Q And you have owned property in Mississippi for some time?

A Well, I guess about ten years, nine or ten years.

Q You filed an application for Homestead Exemption?

A In Mississippi.

Q In Mississippi. When did you do that?

A That I don't recall. Probably sometime in the spring, early January or February. That I don't exactly remember.

Q It was in 1969that you filed for this Homestead Exemption in Mississippi?

A Yes, sir.

Q You do not have a Homestead Exemption in Mississippi for the year 1968, did you?

A No, sir.

Q And you registered in Mississippi on November 6, 1968, the day after you voted in Plaquemined Parish?

A That's right, probably so. At least I don't exactly recall.

pp.33-34

Now, Mr. Hingle, did you receive any notice from the Parish that they were going to destroy the lumber that was stacked on the levee property? I will call that the levee property an/or the shack house.

A No, sir.

Q Now, when you left the property, you remember the last time you saw the property before anything was done to it and the lumber?

A It was on a Wednesday, I know, when I left to go down there.

Q You don't remember the date?

A But I don't -- -- it's during the middle of August but I don't exactly remember the date.

Q And before that had anybody tacked anything on the door or the side of the wall of the shack house?

A No, sir. In fact my son-in-law was with me and we had figured on kind of figuring on how we was going to take the building and put a brick wall to it. You see, it was interior plywood on the building all around and we was going to dress it up because the building was damaged except that we had nailed all this stuff around it.

Q You nailed up the windows?

A To protect the glass, you see, from children and all of that, throwing into it because that plate glass some of it runs into a good deal of money.

Q So your plans were to brick the building?

A To brick the building.

Q Now, did you ever receive a letter or even a telephone call from any Plaquemines Parish official that they were going to destroy the building?

A No, sir.

APPENDIX F

EXCERPT FROM DEPOSITION OF WALTER J. TRAHAN PAGES 4-7.

Q Mr. Trahan, you live in Port Sulphur?

A Well, I partly live over there, I have been there about the last two years, five days a week.

Q And you work where?

A I retired.

Q Do you live near Ernest Hingle's property?

A Well, I have got a little garden there about two blocks from there.

Q You remember when Ernest was tearing down that old house back near the levee?

A Him and his two son-in-laws.

Q '67 – – '68?

A '68.

Q '68. And he he had some lumber piled up on the lot, did he?

A Yes.

Q Did you ever see the lumber?

A Yes, I went there and took a good look at it because I wanted to buy some from the man because I am a bug for cypress.

Q And about when was that, you remember?

A It was sometime in September, I think. I am not positive about the day. I have been trying to recollect but I mean the month and date doesn't mean nothing to me. I just worry about today and tomorrow since I retired.

Q When you looked at this stuff, what was the condition of the house? Then separate from the lumber pile?

A Well, the house was practically all down when I went and looked except half of the front was intact yet. The sills, there was two lines of sills down, and they had one line of sills he had piled up next to the levee and some flooring and floor joyces. And he had a big pile of ceiling, cypress ceiling, next to the house. Well, I wasn't too interested in the ceiling but I was interested in those six by sixes and those four by sixes and the floor joyces so I can build a tractor shed.

Q What do you think that lumber would be worth?

A How would you place something like that you can't buy. I am a bug for cypress. I have got a piece of six by eight over there right now. A fellow offered me $25.00 for it the other day. I don't know what I am going ever to do with it but what is the use of me selling it. I can't buy it now. I have got two two by tens. Yesterday I picked up a cistern. If you could buy, let's say, you'd pay $1,000.00 or $5.00 a foot, if you can get it.

Q Well, what would you estimate the footage was in those stacks of lumber he had up there?

A That is kind of hard because I know he must have had at least 2,000, probably 3,000 feet of ceiling alone there and about 1,200, 1,300 feet of flooring. Well, he had that whole building floored and he had that whole building with the walls and ceiling all over. Now, I don't remember seeing any rafters or the sheeting. I didn't look that much. I saw a big pile of that but I didn't go through that too much. So far as the amount of lumber that they had, I mean, I didn't really count it piece by piece.

Q I understand.

A But I just go see how much he is going to want for it enough for what I want to build. I am building a shed now eighteen by twenty for my tractor and my tractor equipment.

Q What do you think he could have sold that cypress, all of it for, that was usable?

A I tell you that is kind of hard to say because if you find somebody that really wants to buy something like that to build a boat or a barge or anything that he wants to build to stay there -- if it was brand new stuff it would be probably a little bit higher. But then you won't have the material that you got in this old ones. But a lot of people they don't look. They say it is trash. Like one time I bought a lot of rivetman lumber for 80,000 feet. I paid $500.00 for the whole thing. I built a sash for his house on Fire Street with that same trashy lumber which would cost me $700.00 or $800.00 or a $1,000.00 if I went and bought it new. It wouldn't be as good as that.

Q Well, would it be unfair to say that the lumber was worth two or three thousand, four thousand dollars?

A I would imagine $2,500 to $3,000 at least because when you build with something like that -- you see, my house isn't built -- I ain't got one piece of pine in it. One thing we got when I built was cypress I don't have to pay Orkin to treat that lumber, termites is out. I don't have to worry about that house ever rotting because you build a cistern with cypress. I ain't going to build it with pine.

APPENDIX G

PLAQUEMINES PARISH COMMISSION COUNCIL
DEPARTMENT OF SAFETY AND PERMITS

INTER-OFFICE COMMUNICATION

Hingle 10

FOR: Mr. Chalin O. Perez, President DATE: August 2, 1968
Plaquemines Parish Commission Council

FROM: James C. Hoffman

RE:

You will recall that I recently discussed the controlled burning of an abandoned residence and sandwich shop located on the River Road in Port Sulphur, Louisiana, immediately across from the fire house and jail road.

As outlined in Ordinance No. 63 (attached), the buildings were properly posted immediately after hurricane Betsy, however, the signs have since disappeared.

Working with Mr. Arthur Lee Lafrance, Parish Building Official, it is my intention at this time to contact Mr. Camille Gomez or Mr. Wilson Meaux and request a bulldozer to remove these buildings by use of a caterpillar tractor, to a location whereby the controlled burning of same by the Port Sulphur Volunteer Fire Department will not endanger adjacent properties.

If this meets with the approval of the Plaquemines Parish Commission Council please advise so that the above described work can be accomplished.

As I stated before, this property is now owned by Mr. Ernest Hingle, a resident of Picayune, Mississippi.

Yours very truly,
/s/ James C. Hoffman

JCH/fc
cc: Commissioner Luke Perrovich
Mr. Arthur L. LaFrance
Mr. Camille Gomez
Mr. Wilson Meaux

APPENDIX H

EXCERPT FROM DEPOSITION OF JAMES C. HOFFMAN PAGES 11-17 and 23-24.

Q Is that this red notice?

A Yes, sir.

Q This one here?

A Yes, sir.

Q And each time you posted that kind of notice?

A Yes, sir.

Q How many times did you do it?

A Two times.

Q Once right after Hurricane Betsy and once in July?

A Yes, sir.

Q Did you know who owned it, the property, at that time?

A No, sir.

Q You didn't know Mr. Hingle owned it?

A No, I thought Mr. Treadaway owned it.

Q Did you notify Mr. Treadaway?

A No, sir.

Q Did you notify anybody when you posted it?

A Yes, sir.

Q Who?

A Plaquemines Parish Commission Council.

Q Did you go to the public records and look up who owned it?

A I did later.

Q After it was torn down?

A I don't know before or after. Somebody mentioned to me Mr. Hingle had an interest in that. I didn't know this then. I wrote the letter to the Council advising them that Mr. Hingle owned the property.

Q Do you know Mr. Holly?

A Dave Holly?

Q Yes, sir. He is a business partner of yours?

A No, sir.

Q He doesn't have any interest in any business with you?

A No, sir.

Q How long have you known him?

A Since 1955.

Q Did you know he tried to buy this property at one time from Mr. Hingle's wife's family?

A No, sir, I did not know that.

Q Did he ever mention the property to you?

A I seem to recall that he mentioned it to me, yes, sir. There was two or three people that mentioned this property to me. That is why I make the statement.

Q In terms of wanting to buy it or use it or what?

A With regard to Mr. Holly, if he approached me, and I believe he did. But I don't really recall it. It would be to further his interest in a snack shop that he owns in Port Sulphur.

Q As a branch of it?

A I really wouldn't know. You would have to ask him.

Q Did he indicate that he wanted to buy it?

A I vaguely remember a conversation with him. So I don't recall exactly what he wanted with it.

Q Did he indicate who owned it?

A I don't recall.

Q Is it the policy of your office, Mr. Hoffman, to check on the ownership of these properties at the time you post them with these red notices?

A Not necessarily.

Q Have you ever done it before?

A I have burned, oh – – fifty to a hundred houses, I guess.

Q And have you checked the ownership of any of them before you burned them?

A Yes, sir.

Q Have you talked to the owner and told them you were going to burn it before you did it?

A Where we couldn't locate the owner, yes, sir.

Q And where you did locate?

A They lived in Plaquemines Parish and I knew them personally from having lived in the Parish since 1955.

Q But you didn't go around and check the Parish records for ownership before you did it?

A In the ones that I have demolished, I knew most of the people. Its been, I guess, ten or twenty that we have burned after having posted.

Q That you knew the owner of?

A That we didn't know.

Q The rest of them you did know?

A Right.

Q But you don't go around and go to Mr. Lobrano's office, the Clerk of Court, and check with him who the owners are before you do it?

A If in my mind there is any possibility of restoration, yes, I would do it.

Q But if not?

A No.

Q That is a fair statement, I mean, yes is the answer?

A Yes to which question?

Q That where there is no hope of restoration you don't check the Parish Clerk's records as to ownership?

A There again I know most of the people that own the houses.

Q I mean just saying as you said, where you don't know -- I mean where there is no hope of restoration, you don't check with Lobrano, go into the Parish resords and look up the records, is that fair? Is that true?

A On some of them, yes, sir. There again we go back to the point of whether or not they can be restored.

Q Assuming it can't be restored?

A And I can't find the owner?

Q Do you go to Al Lobrano's office and look up the ownership?

A Yes, sir.

Q Is there any reason why you did in some instances and why you don't in others?

A If there is a possibility of restoration we make every effort to find the owner of the building.

Q But if there is none, you don't bother?

A According to our ordinance, it is not necessary that I do so. It is only necessary that I post that warning on the building.

Q So you don't?

A No.

Q In your opinion this one is beyond restoration, this building that we have talked about?

A We have talked about two buildings.

Q Well, we will talk about the one that was up in the ordinance, the one that the Parish knocked down, not the one that he knocked down himself, Hingle, but the one the Parish knocked down.

A I can't see how it could be restored with any amount of money that would be reasonable, no, sir.

Q This was your opinion?

A Yes, sir.

Q And did you write it down anywhere? Did you inform anybody ever or was this just your opinion?

A I discussed this with Mr. Arthur Lee LaFrance whose name appears on the plan. Then I corresponded with the Commission Council.

Q You have that correspondence with you?

A At which point I advised them of my opinion of the property.

Q And then they authorized you to go ahead and knock it down?

appendix h-pp.23-24

A Yes, sir.

Q Had Wolverton complained about the hazard before MR' Hingle tore it down?

A That's correct.

Q Then after Hingle tore it down it was just a foundation plus a lot of lumber piled up?

A Where rats were nesting, yes, sir.

Q And did you all then decide to destroy the lumber, and if so, what kind of hazard was it?

A I didn't decide to destroy the lumber, no, sir, not that particular piece you are referring to now.

Q Well, did somebody destroy the lumber over there, take it away, haul it off?

A I can give you an assumption. I can't give you a fact because I wasn't there when this was done.

Q What was the equipment – –

A It was removed by our Parish cherry picker.

Q What is this, a piece of equipment?

A Yes, sir, lifting equipment.

Q What department?

A Beautification.

Q And who would be in charge of that?

A Mr. B. J. Perez

Q And what is his title?

A I guess he would be Superintendent of Beautification.

Q Do you know under what authority he removed the lumber, if he did, I mean as an assumption?

A No.

Q Was any Parish bulldozer involved in any moving of the lumber?

A Not to my knowledge.

Q Any equipment under your control?

A No, sir.

Q You didn't have any jurisdiction or anything to do with that lumber?

A Not to my knowledge. I don't recall any detail. We do this so often and I can't get--I can't remember issuing instructions on that particular piece of property.

Q Does Mr. Perez have any bulldozers under supervision?

A He got one last month.

Q At the time he didn't. He had a cherry picker which is a crane kind of thing?

A Kind of.

APPENDIX I

EXCERPT FROM DEPOSITION OF MILTON TREADAWAY PAGES 11-12.

Q The old filling station or the snack house, was it also damaged by Hurricane Betsy?

A Well, I don't believe it was moved from where it had been sitting. I didn't go inside and inspect any damage or anything. But from the outside there was nothing torn off it.

Q The inside of that filling station, did it have anything inside it?

A I don't know. I wasn't there.

Q You never did go inside?

A I never did go in it.

Q From your knowledge of this filling station, this old filling station, you think it could have been fixed up?

A It would have took a little doing.

Q What do you mean by that?

A Well, a lot of paint work and probably patch work. It is old.

MR. SMITH: That is all. Thank you, sir.

APPENDIX J

EXCERPT FROM DEPOSITION OF JOSEPH HATTY, JR. PAGES 7-8.

Q Now, did you dig a pit or dig a hole on this side over here within the triangular area?

A Yes, I dug a hole in here.

Q About how deep was it?

A Oh, I would say about seven or eight feet.

Q About how around was it, you know, in circumference?

A The width of the trench, that is what you are speaking of?

Q Yes.

A It wasn't round. It was rectangular.

Q Rectangular?

A Yes, sir. The width of the trench would be, I would say forty inches or something like that.

Q And how long was it?

A Eighteen feet, I would say about eighteen feet.

Q Now, did you have to break up a slab to get into that thing?

A Well, they had concrete there.

Q A concrete slab?

A Yes, sir.

Q And you had to break it up to get into the trench?

A Well, the concrete was broke already and we took it out of the way. We took it up.

APPENDIX K

PLAQUEMINES PARISH COMMISSION COUNCIL
DEPARTMENT OF SAFETY AND PERMITS

INTER-OFFICE COMMUNICATION

Hingle 11

FOR: Mr. B. J. Perez DATE: September 12, 1968

FROM: James C. Hoffman

RE:

Please be advised that an abandoned building located on State Route 23 was recently removed via Plaquemines Parish Commission Council owned bulldozer.

This building was located on the river side of State Route 23 near the Port Sulphur fire house roadway.

Due to circumstances beyond our control, the Port Sulphur Volunteer Fire Department could not control burn this building as it would have endangered adjacent properties.

When the bulldozer moved the building it also scraped up a copious amount of sand and dirt which now prevents us from control burning this building.

In the interest of the Plaquemines Parish Beautification Program, I respectfully request that the remains of this building be removed via Plaquemines Parish Commission Council owned cherry picker and trash truck.

Thank you for your consideration in this matter.

Yours very truly,
/s/ James C. Hoffman

JCH/fc

cc's: Commissioner Luke Petrovich
Commissioner Clarence Kirby
Mr. Chalin O. Perez, President

APPENDIX L

EXCERPT FROM DEPOSITION OF ADOLPH E. WOOLVERTON PAGES 4-5.

Q Mr. Woolverton, you live down in Plaquemines Parish in Port Sulphur?

A Yes, sir.

Q Let me show you a picture which I think includes a picture of your house and ask if you -- if that is it right there in Hingle 8?

A This is my house here, yes.

Q Ernest Hingle owns that property that is marked by that triangle across the street from you?

A That's right.

Q And it used to have an old building on it which looks like this, Hingle 5, is that about right?

A That's right.

Q Did you notice when that old building was torn down?

A Yes, I was there.

Q Did you request that it be torn down?

A Not that one.

Q You requested that the other one?

A Yes, the one next door to me.

Q On this lot here? (indicating)

A Yes, sir.

Q You ever have any problem with this building?

A Any what?

Q Any problem?

A No, not me.

Q Were you there when they knocked it over?

A I sure was.

Q Parish equipment did it?

A That's right.

Q That was sometime in August?

A That I wouldn't know.

Q Right after they knocked it over, what did they start doing with the lot, you know, anything?

A You mean to the piece of land that it was on?

Q Right.

A They just cleared it off, cleared all the trash off of it and there was a lot of big piles we had in the front of it. They cleared all that out because it was sort of a hazard, you see.

Q Right then what did they do?

A They shoved it across the field. They shoved it across the highway.

Q To where?

A Let's see. Here is my house here.

Q Here is the levee at the bottom.

A I have got this thing backways then. That is my house. That is the front of my house here. They just shoved it across. There was a road right there and they shoved it in that road and put it in this corner right here.